

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

Proposing rule making related to banning of pornographic materials within department institutions and providing an opportunity for public comment

The Corrections Department hereby proposes to amend Chapter 20, “Institutions Administration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 904.108 and 2018 Iowa Acts, House File 2492, section 21.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2018 Iowa Acts, House File 2492, section 21.

Purpose and Summary

Section 21 of 2018 Iowa Acts, House File 2492, prohibits funds appropriated to the Department or other funds made available to the Department from being used to distribute or make available any commercially published information or material to an inmate when such information or material is sexually explicit or features nudity. The Department is required to adopt rules pursuant to Iowa Code chapter 17A to administer the section.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

The Department does not have the authority to waive requirements established by statute.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

Michael Savala, General Counsel
Department of Corrections
Jessie Parker Building
510 East 12th Street
Des Moines, Iowa 50319
Phone: 515.725.5701
Email: michael.savala@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

August 21, 2018
11 a.m. to 1 p.m.

Boardroom
Jessie Parker Building
510 East 12th Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of “Commercially published information or material,” “Features,” “Nudity,” “Publication” and “Sexually explicit” in rule **201—20.2(904)**:

“*Commercially published information or material*” means any book, booklet, pamphlet, magazine, periodical, newsletter, photograph or other pictorial depiction, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation, which is distributed or made available through any means or media for commercial purposes. This definition includes any portion extracted, photocopied, or clipped from such items.

“*Features*” means that the publication contains depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues. Publications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition.

“*Nudity*” means a pictorial depiction where genitalia or female breasts are exposed. When the pictorial depiction of the female breast displays the areola or nipple, this material will be rejected.

“*Publication*” means a book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, plus such other materials addressed to a specific incarcerated individual, such as advertising brochures, flyers, and catalogs.

“*Sexually explicit*” means a pictorial depiction of actual or simulated sexual acts including sexual intercourse, oral sex, or masturbation. Sexually explicit material does not include material of a news or information type. Publications concerning research or opinions on sexual, health, or reproductive issues should be admitted unless the publications are otherwise a threat to legitimate institutional interests.

ITEM 2. Amend rule 201—20.6(904) as follows:

201—20.6(904) Publications.

20.6(1) The institution shall allow incarcerated individuals access to publications when doing so is consistent with institutional goals of maintaining internal order, safety, security, and rehabilitation. Publications are additionally governed by the provisions of department of corrections policy OP-MTV-02.

20.6(2) No change.

20.6(3) All publications not on the approved list shall be reviewed by a publication review committee for approval, or denial, or control of the publication.

a. The committee shall be appointed by the director or designee, department of corrections, and shall include a:

(1) A person with broad exposure to various publications, and two

(2) Two representatives of correctional operations.

b. No change.

20.6(4) The following procedures shall be used when a publication not on the approved list is reviewed:

a. The committee shall approve, or deny, or control publications within 30 working days of receipt of the publication.

b. When a publication is denied or controlled, the committee shall send the incarcerated individual a written notice stating the publication involved, the reason for denial or control, and the incarcerated individual's available appeal process.

c. The incarcerated individual shall have five ten days from receipt of the notice of denial or control to notify the designated institution staff to destroy the publication, to specify where to send the publication at the incarcerated individual's expense, or to notify the institution that the decision is being appealed.

d. No change.

20.6(5) A publication may be denied when the publication presents a danger to the security or order of an institution or is inconsistent with rehabilitation goals. Authorized reasons for denying a publication are that the publication:

a. and b. No change.

c. Contains hard-core pornography depicting patently offensive representations of oral, anal, or vaginal intercourse, actual or simulated, involving humans, or depicting patently offensive representations of masturbation, excretory functions, or bestiality, or lewd exhibition of the genitals, which the average adult taking the material as a whole in applying statewide contemporary community standards would find appeals to the prurient interest; and which material, taken as a whole, lacks serious literary, scientific, political, or artistic value as prohibited by Iowa Code section 728.4 or material which is sexually explicit or features nudity.

d. to j. No change.

k. Is a pamphlet, catalog, or other publication whose purpose is primarily or significantly to sell items or materials that are expressly prohibited inside any of the department institutions. The warden can make exceptions for materials that serve reentry efforts.

20.6(6) Portrayal or simulation of fellatio, cunnilingus, masturbation, ejaculation, sexual intercourse, male erection, bestiality, sadomasochism, excretory functions, lewd exhibition of genitals, or other sexually explicit materials will be denied to incarcerated individuals when the material is inconsistent with rehabilitation goals.

20.6(7) Publications which contain material portraying or simulating fellatio, cunnilingus, masturbation, ejaculation, sexual intercourse or male erection and are not approved or denied by the review committee will be controlled for the security and order of the institution and to assist in enabling its control from those incarcerated individuals denied access by 20.6(6) above. Institutional procedures shall be established for the incarcerated individual to reserve time in a designated controlled area and obtain the controlled publication for reading during specified times. The controlled publication will be secured until the incarcerated individual makes arrangements for further review of the controlled publication. An incarcerated individual may have secured no more than ten publications at any given time, none of which are over three months old from publication date or receipt, and any that are in excess of the ten limit or over three months old must be sent out of the institution at the incarcerated individual's expense, destroyed, or taken with the incarcerated individual upon release.

20.6(8) An incarcerated individual may appeal the committee's decision or the denial of a publication because the publication is inconsistent with rehabilitation goals within ten days of receipt of the decision

by filing a written appeal and sending it to Office of Inspector General, Department of Corrections, 510 East 12th Street, Des Moines, Iowa 50319. The inspector general's decision shall be final.